

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN
CITIZENS (LULAC), et al.,

Plaintiffs,

v.

GREG ABBOTT, et al.,

Defendants.

Civil Action No. 3:21-cv-259
(DCG-JES-JVB)
(consolidated cases)

JOINT STATUS REPORT REGARDING PENDING DISPUTES

On August 21, 2023, the Court ordered the parties to file a joint status report regarding various pending disputes. *See* Joint Status Report Order, ECF No. 729. In particular, the Court ordered the parties to identify: (A) all outstanding motions this Court has not resolved in the first instance; (B) all orders from this Court that have been or are stayed, held in abeyance, or appealed; (C) any relevant miscellaneous or other litigation, and the status of that litigation, that is proceeding outside this Court; and (D) any other matters the parties want to bring to the Court's attention, especially related to discovery. *See id.* Using their reasonable best efforts, the parties jointly provide that information herein.

(A) Outstanding Motions

- (1) Legislators' Motion to Quash Margo Cardwell Subpoena, ECF No. 341 ¹

¹ The Court previously denied part of this motion as moot but left pending the part pertaining to Margo Cardwell. *See* Mot. to Quash Order, ECF No. 448; *see also* MALC Pls. Mot. to Quash Resp., ECF No. 360; State and Legis. Mot. to Quash Reply, ECF No. 376; MALC Pls. Mot. to Quash Suppl. Resp., ECF No. 427; State and Legis. Mot. to Quash Reply, ECF No. 428.

- (2) United States' Motion to Enforce Document Subpoenas, ECF No. 351 ²
- (3) United States' Motion to Enforce Chris Gober and the Gober Group Subpoenas, ECF No. 442
- (4) LULAC Plaintiffs' First Motion to Compel Document Subpoenas, ECF No. 447 ³
- (5) United States' First Motion to Compel Legislative Deposition Testimony, ECF No. 522 ⁴
- (6) Private Plaintiffs' Amended First Motion to Compel Regarding Portions of Depositions Subject to Legislative Privilege Objections, ECF No. 555 ^{4 5}

² The Court previously granted this motion on July 25, 2022. *See* 1st Legis. Docs. Order, ECF No. 467. After the Legislators appealed, the Fifth Circuit vacated this Court's order and remanded the appeal. *See* Unpublished Order, *LULAC v. Patrick*, No. 22-50662 (5th Cir. July 18, 2023), ECF No. 107-1. This motion is now pending again in this Court and a subject of the second round of supplemental briefing regarding the legislative privilege set to be completed on September 14, 2023. *See* 2d Suppl. Br. Order, ECF No. 719; *see also* U.S. 2d Suppl. Open. Br., ECF No. 722; Private Pls. 2d Suppl. Open. Br., ECF No. 725.

³ The documents at issue in this motion substantially overlap with those at issue in the United States' motion to enforce its document subpoenas. *See* U.S. Mot. to Enforce Docs. Subpoenas, ECF No. 351. But because there is not complete overlap, this motion is a subject of both the first and second rounds of supplemental briefing regarding the legislative privilege, all of which is set to be completed on September 14, 2023. *See* 1st Suppl. Br. Order, ECF No. 703; 2d Suppl. Br. Order, ECF No. 719; *see also* U.S. 1st Suppl. Open Br., ECF No. 708; Private Pls. 1st Suppl. Open Br., ECF No. 709; State and Legis. 1st Suppl. Resp. Br., ECF No. 721; U.S. 2d Suppl. Open. Br., ECF No. 722; Private Pls. 2d Suppl. Open. Br., ECF No. 725; U.S. 1st Suppl. Reply Br., ECF No. 727; Private Pls. 1st Suppl. Reply Br., ECF No. 728.

⁴ This motion is a subject of the first round of supplemental briefing regarding the legislative privilege that the parties completed on August 11, 2023. *See* 1st Suppl. Br. Order, ECF No. 703; *see also* U.S. 1st Suppl. Open Br., ECF No. 708; Private Pls. 1st Suppl. Open Br., ECF No. 709; State and Legis. 1st Suppl. Resp. Br., ECF No. 721; U.S. 1st Suppl. Reply Br., ECF No. 727; Private Pls. 1st Suppl. Reply Br., ECF No. 728.

⁵ On August 9, 2022, the Private Plaintiffs filed their original first motion to compel regarding portions of depositions subject to legislative privilege objections. *See* Private Pls. Orig. 1st Mot. to Compel. Legis. Dep. Test., ECF No. 523. That motion remains pending on the docket sheet. *See id.* On August 19, 2022, the Court granted the Private Plaintiffs' request to amend that motion. *See* Text Order (Aug. 19, 2022). In light of that order and the Private Plaintiffs' filing of this amended motion, the Court can deny the original motion as moot. In addition, the deposition testimony at issue in this amended motion substantially overlaps with that at issue in

- (7) United States' Motion to Enforce Order Compelling Office of the Attorney General ("OAG") Documents, ECF No. 527 ⁴
- (8) United States' Motion to Enforce Rep. Michael Schofield Subpoena, ECF No. 532 ⁴
- (9) LULAC Plaintiffs' Second Motion to Compel Document Subpoenas, ECF No. 540 ⁴
- (10) United States' Second Motion to Compel Legislative Deposition Testimony, ECF No. 542 ⁴
- (11) Private Plaintiffs' Second Motion to Compel Regarding Portions of Depositions Subject to Legislative Privilege Objections, ECF No. 543 ^{4 6}
- (12) LULAC Plaintiffs' Motion to Compel OAG Documents, ECF No. 548 ^{4 7}
- (13) LULAC Plaintiffs' Motion to Reopen Sen. Joan Huffman Deposition and Compel Deposition Answers, ECF No. 580
- (14) LULAC Plaintiffs' Motion to Compel Anna Mackin Document Subpoena, ECF No. 582 ³
- (15) Fair Maps Plaintiffs' Unopposed Motion to Withdraw Chandrashekar Benakatti, ECF No. 594
- (16) United States' Third Motion to Compel Legislative Deposition Testimony, ECF No. 600 ^{4 8}

the United States' first motion to compel legislative deposition testimony. *See* U.S. 1st Mot. to Compel Legis. Dep. Test., ECF No. 522.

⁶ The deposition testimony at issue in this motion substantially overlaps with that at issue in the United States' second motion to compel legislative deposition testimony. *See* U.S. 2d Mot. to Compel Legis. Dep. Test., ECF No. 542.

⁷ The documents at issue in this motion substantially overlap with those at issue in the United States' motion to enforce the order compelling OAG documents. *See* U.S. Mot. to Enforce Order Compel. OAG Docs., ECF No. 527.

⁸ By separate joinder, the LULAC Plaintiffs joined in this motion. *See* LULAC Pls. Joinder, ECF No. 602.

- (17) LULAC Plaintiffs’ Motion to Reopen Discovery to Subpoena Dave’s Redistricting App LLC (“DRA”), ECF No. 617
- (18) United States’ Renewed Motion to Compel Eric Wienckowski and Thomas Bryan Documents, ECF No. 634
- (19) United States’ Fourth Motion to Compel Legislative Deposition Testimony, ECF No. 636 ⁴
- (20) LULAC Plaintiffs’ Motion to Compel Deposition Testimony of Reps. Todd Hunter and Andrew Murr, ECF No. 638 ^{4,9}
- (21) United States’ Motion to Compel Texas Legislative Council Documents, ECF No. 644 ⁴
- (22) Texas NAACP’s Motion to Compel Sen. Brian Birdwell Deposition Testimony, ECF No. 649

(B) Stayed, Held in Abeyance, or Appealed Orders

- (1) Preliminary Injunction Denial Order, ECF No. 176 ¹⁰
- (2) First Legislative Depositions Order, ECF No. 282 ¹¹

⁹ The deposition testimony at issue in this motion substantially overlaps with that at issue in the United States’ fourth motion to compel legislative deposition testimony. *See* U.S. 4th Mot. to Compel Legis. Dep. Test., ECF No. 636.

¹⁰ Following the entry of this order, the Court issued an opinion explaining its reasoning on May 4, 2022. *See* Prelim. Inj. Op., ECF No. 258. The Brooks Plaintiffs appealed the order and opinion on June 2, 2022. *See* Brooks Pls. Notice of Appeal, ECF No. 314. The Supreme Court dismissed the appeal for want of jurisdiction on November 21, 2022. *See* Order, *Brooks v. Abbott*, No. 22-136 (U.S. Nov. 21, 2022).

¹¹ The Legislators appealed this order on May 18, 2022. *See* Legis. 1st Notice of Appeal, ECF No. 284. This Court, the Fifth Circuit, and the Supreme Court denied the Legislators’ request to stay the order pending appeal. *See* Stay Order, ECF No. 296; Order, *LULAC v. Guillen*, No. 22-50407 (5th Cir. May 20, 2022), ECF No. 63-1; Order, *Guillen v. LULAC*, No. 21A756 (U.S. May 31, 2022). On June 17, 2022, the Fifth Circuit held the appeal in abeyance pending further orders from this Court related to legislative depositions. *See* Order, *LULAC v. Guillen*, No. 22-50407 (5th Cir. June 17, 2022), ECF No. 85-1. The appeal remains in abeyance and the Legislators continue to provide the Fifth Circuit monthly status reports. *See, e.g.*, Legis. Status Report, *LULAC v. Guillen*, No. 22-50407 (5th Cir. Aug. 9, 2023), ECF No. 142.

- (3) Second Legislative Depositions Order, ECF No. 340 ¹²
- (4) Third Legislative Depositions Order, ECF No. 409 ¹²
- (5) First Legislative Documents Order, ECF No. 467 ¹³
- (6) Second Legislative Documents Order, ECF No. 642 ¹⁴

(C) Relevant Outside Litigation

- (1) *Morris v. Texas*, No. 21-cv-3456 (S.D. Tex.) ¹⁵

¹² On July 15, 2023, the Legislators amended their May 18, 2022 notice of appeal to incorporate this order. *See* Legis. Am. 1st Notice of Appeal, ECF No. 437. That consolidated appeal remains in abeyance in the Fifth Circuit, subject to monthly status reports. *See supra* note 11.

¹³ The Legislators appealed this order on July 26, 2022. *See* Legis. 2d Notice of Appeal, ECF No. 479. The Fifth Circuit administratively stayed the order the next day. *See* Order, *LULAC v. Patrick*, No. 22-50662 (5th Cir. July 27, 2022), ECF No. 30-2. In light of *LULAC Texas v. Hughes*, 68 F.4th 228 (5th Cir. 2023), the Fifth Circuit vacated this order and remanded the appeal to this Court on July 18, 2023. *See* Unpublished Order, *LULAC v. Patrick*, No. 22-50662 (5th Cir. July 18, 2023), ECF No. 107-1. The motion underlying this order is now pending again in this Court and a subject of the second round of supplemental briefing regarding the legislative privilege set to be completed on September 14, 2023. *See supra* note 2.

¹⁴ On November 23, 2022, the Court clarified that the Legislators need not produce the relevant documents subject to legislative privilege claims until the Fifth Circuit dissolved its administrative stay in *Patrick* or otherwise resolved that appeal. *See* Clarification Order, ECF No. 654. The Court noted that it would indicate when that time has arrived by further order. *See id.* On December 9, 2022, the Legislators amended their July 26, 2022 notice of appeal to incorporate this second legislative documents order. *See* Legis. Am. 2d Notice of Appeal, ECF No. 672. In light of *Hughes*, the Fifth Circuit remanded the consolidated appeal back to this Court on July 18, 2023. *See supra* note 13.

¹⁵ On October 20, 2021, a pro se plaintiff filed this lawsuit in the Southern District of Texas, raising a constitutional challenge to Texas's reapportionment of Congressional districts. *See* Pl. Compl., *Morris v. Texas*, No. 21-cv-3456 (S.D. Tex. Oct. 20, 2021), ECF No. 1. No party requested consolidation with the instant litigation and the Southern District of Texas dismissed the case. *See* Order, *Morris v. Texas*, No. 21-cv-3456 (S.D. Tex. June 8, 2022), ECF No. 26. The Fifth Circuit affirmed and the Supreme Court declined to grant certiorari. *See* Order, *Morris v. Texas*, No. 22-20348 (5th Cir. Feb. 6, 2023), ECF No. 47-1; Order, *Morris v. Texas*, No. 22-1088 (U.S. June 20, 2023).

- (2) *In re Subpoena to Thomas Bryan*, No. 22-mc-7 (E.D. Va.) ¹⁶
- (3) *In re Subpoena to Eric Wienckowski*, No. 22-mc-164 (S.D.N.Y.) ¹⁷
- (4) *In re Subpoenas to Adam Kincaid and the National Republican Redistricting Trust*, No. 22-cv-67 (D.D.C.) ¹⁸
- (5) *In re Subpoena to Dave's Redistricting App LLC*, No. 22-cv-1203 (W.D. Wa.) ¹⁹

¹⁶ The United States filed this subpoena enforcement action on June 14, 2022. *See* U.S. Mot to Enforce Bryan Subpoena, *In re Bryan Subpoena*, No. 22-mc-7 (E.D. Va. June 14, 2022), ECF No. 1. The action was transferred to this Court, and thus closed in the Eastern District of Virginia, on July 5, 2022. *See* Bryan Subpoena Transfer Order, *In re Bryan Subpoena*, No. 22-cv-7 (E.D. Va. July 5, 2022), ECF No. 8. Issues emanating from this action are presented in the United States' renewed motion to compel Wienckowski and Bryan documents, which is pending in this Court. *See* U.S. Renewed Mot. to Compel Wienckowski and Bryan Docs., ECF No. 634.

¹⁷ The United States filed this subpoena enforcement action on June 15, 2022. *See* U.S. Mot to Enforce Wienckowski Subpoena, *In re Wienckowski Subpoena*, No. 22-mc-164 (S.D.N.Y. June 15, 2022), ECF No. 1. The action was transferred to this Court, and thus closed in the Southern District of New York, on June 24, 2022. *See* Wienckowski Subpoena Transfer Order, *In re Wienckowski Subpoena*, No. 22-cv-164 (S.D.N.Y. June 24, 2022), ECF No. 15. Issues emanating from this action are presented in the United States' renewed motion to compel Wienckowski and Bryan documents, which is pending in this Court. *See* U.S. Renewed Mot. to Compel Wienckowski and Bryan Docs.

¹⁸ On July 12, 2022, Adam Kincaid and the National Republican Redistricting Trust (collectively, the "NRRT") filed this action in the District of Columbia to quash deposition subpoenas issued to them by the LULAC Plaintiffs. *See* NRRT Mot. to Quash Subpoenas, *In re NRRT Subpoenas*, No. 22-mc-67 (D.D.C. July 12, 2022), ECF No. 1. On August 9, 2023, the magistrate judge assigned to the case recommended denying the NRRT's motion to quash in full. *See* R. & R., *In re NRRT Subpoenas*, No. 22-mc-67 (D.D.C. Aug. 9, 2023), ECF No. 20. The NRRT filed its objections to the report and recommendation on August 23, 2023. *See* NRRT Objections, *In re NRRT Subpoenas*, No. 22-mc-67 (D.D.C. Aug. 23, 2023), ECF No. 21. Responses to the objections are due on September 6, 2023. *See* Text Order, *In re NRRT Subpoenas*, No. 22-mc-67 (D.D.C. Aug. 24, 2023).

¹⁹ On August 12, 2022, Rep. Jacey Jetton and Adam Foltz (collectively, "Jetton") filed this action to stay, transfer, or quash a document subpoena issued to DRA by the United States. *See* Jetton Mot. to Stay, Transfer, or Quash Subpoena, *In re DRA Subpoena*, No. 22-cv-1203 (W.D. Wa. Aug. 12, 2022), ECF No. 1. On the same day, the Western District of Washington declined to transfer the action but stayed the subpoena pending its consideration of the motion to quash. *See* Stay, Transfer, and Quash Order, *In re DRA Subpoena*, No. 22-cv-1203 (W.D. Wa. Aug. 12, 2022). The motion to quash has been fully briefed since August 26, 2022. *See* U.S. Mot. to Quash Resp., *In re DRA Subpoena*, No. 22-cv-1203 (W.D. Wa. Aug. 23, 2022), ECF No. 8;

(D) Other Matters for the Court's Attention

The Plaintiffs believe that scheduling trial would facilitate the resolution of this consolidated litigation. The Plaintiffs suggest that holding trial in spring 2024 is reasonable, should the various discovery disputes be resolved by then. Accordingly, the Plaintiffs respectfully request guidance from the Court as to the dates on which it is available for trial after the week of March 5, 2024, on which date Texas is scheduled to hold a primary election. Upon receiving the Court's availability, the Plaintiffs will seek to meet and confer with the State Defendants and submit to the Court a proposed schedule for pre-trial proceedings—including, for example, any amendments of pleadings to account for the 88th Legislature's reenactment of the redistricting plans initially passed by the 87th Legislature, any supplemental expert reports to address recent elections and demographic data, and any limited reopening of fact discovery.

The State Defendants' position is that it is premature to schedule trial at this time. The State Defendants respectfully request that the Court set a trial date only after ruling upon the motions presently pending before the Court. Additionally, the Plaintiffs have declined to inform the State Defendants whether they intend to seek preliminary injunction relief, and only this evening, informed the State Defendants that one or more of the Plaintiffs groups plan to amend their pleadings to address the redistricting plans enacted by the 88th Legislature. The Plaintiffs' email, however, failed to apprise the State Defendants which of the Plaintiffs groups intend to submit amended complaints, how many of the Plaintiffs groups intend to do so, and when the

Jetton Mot. to Quash Reply, *In re DRA Subpoena*, No. 22-cv-1203 (W.D. Wa. Aug. 26, 2022), ECF No. 9. On November 15, 2022, the Western District of Washington ordered the parties to file joint status reports quarterly or upon the occurrence of any significant development in the litigation before this Court. *See* Minute Order, *In re DRA Subpoena*, No. 22-cv-1203 (W.D. Wa. Nov. 15, 2022), ECF No. 19. The parties continue to provide those status reports. *See, e.g.*, Joint Status Report, *In re DRA Subpoena*, No. 22-cv-1203 (W.D. Wa. Aug. 10, 2023), ECF No. 27.

State Defendants and this Court should expect the new filings. Amendment of the Plaintiffs' pleadings may restart motion practice; rulings on outstanding discovery motions may restart appellate proceedings or additional discovery; and new motions for preliminary injunction will certainly inhibit the State Defendants' ability to prepare for trial. The State Defendants are unable to determine a reasonable proposed schedule for pretrial proceedings, including any reopening of expert or fact discovery, without this information.

Dated: August 28, 2023

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CERTIFICATE OF SERVICE

I hereby certify that, on August 28, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to counsel of record.

/s/ Jaywin Singh Malhi

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